

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Margot Hesel	Team: Team # 8	CCRB Case #: 200808464	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/12/2008 11:30 PM	Location of Incident: § 87(2)(b)	Precinct: 101	18 Mo. SOL 12/12/2009	EO SOL 12/12/2009	
Date/Time CV Reported Fri, 06/13/2008 2:13 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/13/2008 2:13 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Andre Figueiredo	18440	936595	101 PCT
2. SGT Patrick Cain	01702	931572	101 PCT
3. Officers			101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jason Jansky	31469	936807	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andre Figueiredo	Abuse: PO Andre Figueiredo stopped § 87(2)(b)	§ 87(2)(b)
B.POM Andre Figueiredo	Abuse: PO Andre Figueiredo frisked § 87(2)(b)	§ 87(2)(b)
C.POM Andre Figueiredo	Abuse: PO Andre Figueiredo searched § 87(2)(b)	§ 87(2)(b)
D. Officers	Abuse: Officers entered § 87(2)(b)	§ 87(2)(b)
E.SGT Patrick Cain	Discourtesy: Sgt. Patrick Cain acted rudely toward § 87(2)(b)	§ 87(2)(b)
F. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
G. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)

Synopsis

On June 13, 2008, at approximately 11:30 PM, PO Andre Figueiredo from the 101st Precinct stopped § 87(2)(b) inside the lobby of § 87(2)(b) (Allegation A). PO Figueiredo frisked and searched § 87(2)(b) (Allegation B, Allegation C). PO Figueiredo, Sgt. Patrick Cain from the 101st Precinct, and PO Jason Jansky from the 101st Precinct entered § 87(2)(b)'s apartment, § 87(2)(b) (Allegation D). While inside § 87(2)(b)'s apartment, Sgt. Cain acted rudely toward § 87(2)(b) (Allegation E). PO Figueiredo then arrested § 87(2)(b) and officers from the 101st Precinct used physical force against § 87(2)(b) (Allegation F) and § 87(2)(b) (Allegation G).

§ 87(2)(g)

§ 87(2)(g)

This case was originally assigned to Investigator Nicholas Harmon. The case was reassigned to Investigator Hesel on January 23, 2009.

Summary of Complaint

On June 13, 2009, Sgt. Patrick Cain called Internal Affairs, generating log #08-26131, which was forwarded to the CCRB on June 13, 2008 (encl. 6A-C). On June 12, 2009, § 87(2)(b) filed a complaint with the CCRB via phone on behalf of her two sons, § 87(2)(b) and § 87(2)(b) (encl. 7A-B). § 87(2)(b) did not witness the incident.

§ 87(2)(b) is a § 87(2)(b) old black male. He is 6'0" tall, weighs 160 lbs, and has black hair and black eyes. § 87(2)(b) was interviewed at the CCRB on July 30, 2008 (encl. 8A-E). Upon case reassignment, Inv. Hesel made multiple attempts to contact § 87(2)(b) for an additional phone statement, but was ultimately unsuccessful.

On June 12, 2008, at approximately 11:30 PM, § 87(2)(b) entered the elevator on the first floor of his apartment building at § 87(2)(b). § 87(2)(b) lives on the sixth floor, and pressed six to go to his apartment. § 87(2)(b) was returning from a trip to a nearby store. Upon entering the elevator, § 87(2)(b) noticed a closed red and white box of bullets that was four inches by five inches, and had writing on it, sitting at the back left hand corner of the elevator. § 87(2)(b) rode the elevator up to the sixth floor of his building. Upon reaching the sixth floor, however, the elevator door did not open, and the elevator returned to the first floor.

When the elevator arrived at the first floor, the elevator door opened onto the building lobby. § 87(2)(b) saw a group of three police officers standing in the lobby. § 87(2)(b) thought that these officers were detectives because they were wearing plainclothes but one of the officers, PO1, was wearing a police badge on a chain. PO1 was approximately 5'9" tall, 200 lb white male with a medium build and spiked light brown hair. PO1 was subsequently identified as PO Andre Figueiredo from the 101st Precinct. PO2 was a 5'10" tall, 190 lb white male who was wearing a grey sweater. PO2 was subsequently identified by the investigation as PO Jason Jansky from the 101st Precinct. PO3 was a 6'2" tall, 250 lb white male with brown hair and blue eyes who was wearing a grey jacket. PO3 was subsequently identified by the investigation as Sgt. Patrick Cain from the 101st Precinct.

PO Figueiredo asked § 87(2)(b) where he was coming from. § 87(2)(b) told PO Figueiredo he was coming from a store. At this point, § 87(2)(b) stepped out of the elevator into the lobby. PO Figueiredo asked § 87(2)(b) for identification, which § 87(2)(b) provided (**Allegation A**). PO Figueiredo then began to pat § 87(2)(b) down over his two front pants pockets (**Allegation B**). PO Figueiredo reached his hand into § 87(2)(b)'s right front pocket, his left front pocket, and his two back pants pockets (**Allegation C**). PO Figueiredo then looked at § 87(2)(b)'s identification, and asked him how old he was. § 87(2)(b) said that he was § 87(2)(b). PO Figueiredo said that because § 87(2)(b) was only § 87(2)(b) the officers could not question him without a parent.

At some point during § 87(2)(b)'s interaction with PO Figueiredo, either PO Jansky or Sgt. Cain entered the elevator, and noticed the box of bullets on the elevator's floor. This officer said, "Oh, now he got bullets. He had bullets on him." This officer told PO Figueiredo that the officers had to take him upstairs. PO Figueiredo told § 87(2)(b) that he was going to be taken upstairs.

PO Figueiredo told § 87(2)(b) to put his hands behind his back, and § 87(2)(b) complied. PO Figueiredo placed handcuffs on his wrists. PO Figueiredo, PO Jansky, and Sgt. Cain entered the elevator with § 87(2)(b) and traveled to the sixth floor. Once they arrived on the sixth floor, PO Figueiredo asked § 87(2)(b) where he lived, and § 87(2)(b) showed the officers to his apartment, § 87(2)(b). PO Figueiredo told § 87(2)(b) "Wait right here," as he opened the door to § 87(2)(b)'s residence (**Allegation D**). The apartment door was closed, but not locked. PO Figueiredo walked into § 87(2)(b)'s residence. PO Jansky and Sgt. Cain escorted § 87(2)(b) into his apartment with one of their hands on each of his arms (**Allegation D**).

§ 87(2)(b)'s apartment opens into the living room. There is a couch in the living room, close to the apartment door. A narrow hallway leads from the living room to the bedrooms. PO Jansky and Sgt. Cain helped § 87(2)(b) sit down on the couch in the living room. From his position, § 87(2)(b) was able to see the beginning of the hallway but he could not see down the hallway. § 87(2)(b)'s brother, § 87(2)(b), walked down the hallway, and approached PO Figueiredo, PO Jansky and Sgt. Cain. § 87(2)(b) saw § 87(2)(b) in handcuffs, and asked what was going on. PO Figueiredo told § 87(2)(b) that because § 87(2)(b) had bullets on him the officers had probable cause to search the apartment. § 87(2)(b) told PO Figueiredo that he was not sure if this was true, and he wanted to call his mother.

PO Figueiredo asked § 87(2)(b) if he could calm his brother down. At that time, § 87(2)(b) did not believe that § 87(2)(b) was acting in a manner that warranted this comment. § 87(2)(b) picked up a phone, and, as he walked towards the rear of the apartment through the hallway, began to dial their mother, § 87(2)(b).

Sgt. Cain followed § 87(2)(b) down the hallway, and slapped the phone out of § 87(2)(b)'s hand (**Allegation E**). § 87(2)(b) did not believe that § 87(2)(b) had yet made contact with their mother when this happened. At this point § 87(2)(b) could see Sgt. Cain, but he could not see his brother. § 87(2)(b) heard § 87(2)(b) and Sgt. Cain begin to engage in what sounded to be a physical struggle. § 87(2)(b) was not able to see any part of this struggle, but heard the sound of what he thought were bodies striking against the walls of the hallway. § 87(2)(b) estimated that the struggle lasted for a few seconds. § 87(2)(b) then saw PO Figueiredo run down the hallway, as if to assist Sgt. Cain. PO Jansky stayed with § 87(2)(b) in the living room. During this time, § 87(2)(b) could not see his brother, as his line of sight was blocked by PO Figueiredo and Sgt. Cain. § 87(2)(b) called out to § 87(2)(b) and told him to try and calm down. § 87(2)(b) did not know if he was able to convince § 87(2)(b) to relax.

One of the officers used his radio to call for back up. Approximately two minutes later a group of approximately six or seven uniformed male officers arrived outside § 87(2)(b)'s apartment. § 87(2)(b) remained sitting on the couch in the living room. PO4 was a black male with a bald head. PO5 was a 5'5" tall male officer with a goatee. PO6 was a 5'5" tall white male with black hair. PO7 was a 6'0" tall white male officer with brown hair. § 87(2)(b) could not describe any of these officers further and could not provide physical descriptions for any of the other officers who arrived.

§ 87(2)(b) was brought into the living room, near § 87(2)(b) Sgt. Cain and PO Figueiredo brought § 87(2)(b) to the apartment door with one of his hands in handcuffs . .

§ 87(2)(b) saw Sgt. Cain walk towards the back of the apartment and enter § 87(2)(b)'s sister's room. § 87(2)(b) heard Sgt. Cain say, "Hot cheese," and state that he had found a "ratchet." § 87(2)(b) understood this to mean that a gun had been found in the apartment. § 87(2)(b) had not previously known that there was a gun inside his apartment.

PO Figueiredo escorted § 87(2)(b) into the hallway outside of § 87(2)(b)'s apartment. § 87(2)(b) saw some of the officers who had responded outside his apartment punch § 87(2)(b) in the ribs with closed fists (**Allegation F**). § 87(2)(b) could not articulate which officers did so. § 87(2)(b) did not physically struggle with any of the officers. § 87(2)(b) screamed "Help," multiple times. § 87(2)(b)'s neighbor, subsequently identified by the investigation as § 87(2)(b) opened his apartment door into the hallway. One of the officers with § 87(2)(b) told § 87(2)(b) to close his door and § 87(2)(b) complied.

Two or three officers escorted § 87(2)(b) and § 87(2)(b) to the elevator. § 87(2)(b) could not articulate which officers escorted him. While walking to the elevator, § 87(2)(b) was punched four times with a closed fist in his lower back (**Allegation G**). § 87(2)(b) was not able to see which officer had punched him. Once § 87(2)(b) and the officers reached the elevators, § 87(2)(b) saw § 87(2)(b)'s girlfriend. § 87(2)(b) did not believe that § 87(2)(b) saw anything that occurred inside of the elevator, but merely glimpsed § 87(2)(b) and § 87(2)(b) as they were leaving. Once inside the elevator, an officer pushed § 87(2)(b)'s head against the wall of the elevator and held it there (**Allegation G**). § 87(2)(b) could not describe the officer that did this. § 87(2)(b) heard § 87(2)(b) cry out for help, but he could not see what was occurring between § 87(2)(b) and the other officers, due to the position of his head.

§ 87(2)(b) and § 87(2)(b) were escorted outside § 87(2)(b) and taken to separate patrol cars. § 87(2)(b) was taken to the 101st Precinct. § 87(2)(b)'s mother, § 87(2)(b) arrived at the precinct two hours later to pick up § 87(2)(b). An officer whom § 87(2)(b) could not identify told § 87(2)(b) that bullets had been found in § 87(2)(b)'s pants pocket. § 87(2)(b) maintained that the bullets were not in his pocket, but rather on the floor of the elevator. While at the precinct, § 87(2)(b) saw the gun that Sgt. Cain had found in his apartment inside of a plastic bag. It was an eight inch long black hand gun. § 87(2)(b) was not charged with anything and allowed to leave the precinct with his mother. § 87(2)(b) did not sustain any physical injuries, and he did not seek medical treatment.

Results of Investigation

Attempts to Contact Additional Civilians

The investigation made the following attempts to contact § 87(2)(b). On July 30, 2009, Inv. Harmon determined that § 87(2)(b) was currently incarcerated and made arrangements to interview him at Rikers Island on December 1, 2008. On December 10, 2008, Inv. Harmon traveled to Rikers Island to interview § 87(2)(b) and found that § 87(2)(b) was no longer incarcerated. Inv. Harmon was unable to determine § 87(2)(b)'s whereabouts. Upon case reassignment, on January 30, 2009, Inv. Hesel determined that § 87(2)(b) was no longer incarcerated, and sent a first please call letter to his provided address at § 87(2)(b). Between February 2, 2009 and February 19, 2009, the investigator placed five calls to § 87(2)(b)'s provided number and was unable to leave messages for him. On February 3, 2009, a COLE search for § 87(2)(b) at § 87(2)(b) was negative. Also on this date, a Lexis Nexis search revealed a listing for § 87(2)(b) at his § 87(2)(b) but no phone number was listed (16Y). On February 10, 2009, a final please call letter was sent to § 87(2)(b) at § 87(2)(b). On February 17, 2009, a Verizon subpoena revealed that the account for § 87(2)(b) at § 87(2)(b) was not currently in service (encl. 18A-C). Attempts to contact § 87(2)(b)'s girlfriend, § 87(2)(b) his mother, § 87(2)(b) and his brother, § 87(2)(b) for additional contact information for § 87(2)(b) were unsuccessful.

§ 87(2)(b)

The investigation identified § 87(2)(b) a resident of § 87(2)(b) at § 87(2)(b) as a potential witness. § 87(2)(b) provided the following phone statement to the CCRB on March 30, 2009 (encl. 9A). § 87(2)(b) declined to provide a sworn statement to the CCRB.

§ 87(2)(b) reported that on June 13, 2008, at some time in the evening, he looked through his peephole and saw his neighbor, nicknamed "§ 87(2)(b)" and identified as § 87(2)(b) being carried by his arms and legs outside of his apartment into the hallway. § 87(2)(b) identified § 87(2)(b) as a young man who lives across the hall from him in § 87(2)(b). § 87(2)(b) was handcuffed. Two or three officers hit § 87(2)(b) two to three times with a flashlight on his back and his neck. § 87(2)(b) could only provide a physical description for one of the officers who hit § 87(2)(b). PO1 was a 6'3"-6'4" tall white male wearing a light blue NYPD jacket and jeans. PO1 walked up to § 87(2)(b)'s door and covered the peephole with his hand. § 87(2)(b) opened his door a few inches, and PO1 immediately closed his door, saying "Don't open your door." § 87(2)(b) went back inside his apartment and did not see anything else.

Police Officer Statements

PO Andre Figueiredo

PO Andre Figueiredo is a § 87(2)(b)-old white male. He is 5'10" tall, weighs 180 lbs, has brown hair, brown eyes, and wears eyeglasses. PO Figueiredo is assigned to the 101st Precinct and has been a member of service for four years. PO Figueiredo was interviewed at the CCRB on May 13, 2009 (encl. 10F-H). On the day of the incident, PO Figueiredo was assigned to Precinct Anti-Crime and worked from 5:30 PM to 2:05 AM with Sgt. Patrick Cain and PO Jason Jansky. PO Figueiredo was wearing brown shorts and a black t-shirt, and was assigned to an unmarked dark grey Chevy Impala.

PO Figueiredo's memobook (encl. 10A-C) reflected that at 1:16 AM, two males were under arrest at § 87(2)(b): § 87(2)(b) for § 87(2)(b), and § 87(2)(b) for § 87(2)(b). PO Figueiredo's memobook further reflected that at 1:20 AM he arrived at the 101st Precinct for arrest processing, and at 1:45 AM, § 87(2)(b) was removed to § 87(2)(b) for injuries. At 2:00 AM, PO Figueiredo began the arrest paperwork for § 87(2)(b) and juvenile report for § 87(2)(b) and made notifications to IAB, OCCB and PBQS.

Criminal Court Complaint

A criminal court complaint pertaining to § 87(2)(b)'s arrest was prepared on June 13, 2008 (encl. 10D-E). The complaint noted that on June 13, 2008, between 1:10 AM and 1:16 AM, PO Figueiredo entered § 87(2)(b) with an apprehended juvenile so the juvenile could obtain his identification. The complaint also noted details pertaining to § 87(2)(b)'s arrest, § 87(2)(g)

CCRB Statement

On June 12, 2008, at approximately 12:00 PM, PO Figueiredo, PO Jansky and Sgt. Cain entered the lobby of § 87(2)(b) with the intention of performing a vertical. PO Figueiredo observed a black male, who was approximately two feet in front of him, entering an elevator with his back toward PO Figueiredo and his partners. Further investigation identified this individual as § 87(2)(b). § 87(2)(b) was in the process of putting a small box inside one of his pants pockets when he turned his head around and saw PO Figueiredo and his partners. § 87(2)(b) threw the box on the elevator floor. PO Figueiredo, PO Jansky, and Sgt. Cain approached § 87(2)(b) and asked him what was going on. PO Figueiredo recovered the box that § 87(2)(b) had thrown to the elevator floor. It was a small white box of

9mm Winchester ammunition with red lettering. § 87(2)(b) told PO Figueiredo that the ammunition was not his. § 87(2)(b) stated that the ammunition belonged to his brother, and that § 87(2)(b) was bringing the ammunition to him.

PO Figueiredo determined that § 87(2)(b) would be arrested for § 87(2)(b). PO Figueiredo asked § 87(2)(b) for identification. § 87(2)(b) told PO Figueiredo his name, age, and date of birth, and stated that he lived on the 6th floor of the building. § 87(2)(b) showed PO Figueiredo a school ID that listed his name but not his address. PO Figueiredo recalled that § 87(2)(b) was either § 87(2)(b) years old. As § 87(2)(b) was under 16 years of age, and therefore a juvenile, PO Figueiredo stated that it was procedure to inform one of § 87(2)(b)'s family members before taking him to the precinct. In addition, as § 87(2)(b)'s school ID did not list his address, PO Figueiredo wanted to confirm that § 87(2)(b) was not trespassing per ordinance of a NYCHA building. PO Figueiredo stated that it was standard procedure to verify individual's identity within NYCHA buildings through valid identification, or if the individual is a visitor, to confirm they have the resident's permission to be within the building.

As § 87(2)(b) possessed ammunition, PO Figueiredo and PO Jansky performed a frisk of § 87(2)(b)'s waistband and pants pockets for weapons. A search was performed incident to § 87(2)(b)'s arrest, but PO Figueiredo did not recall when the search was performed. PO Figueiredo asked § 87(2)(b) if there were any family members at home, and § 87(2)(b) stated that his older brother was. PO Figueiredo asked § 87(2)(b) if he and his partners could speak with his brother, and § 87(2)(b) said yes. PO Figueiredo did not handcuff § 87(2)(b) at this time because § 87(2)(b) was very compliant and did not pose a threat. PO Figueiredo, PO Jansky, and Sgt. Cain followed § 87(2)(b) into the elevator and to § 87(2)(b)'s apartment on the 6th floor.

PO Figueiredo, PO Jansky, and Sgt. Cain followed § 87(2)(b) to § 87(2)(b), where the door to the apartment was closed. PO Figueiredo asked § 87(2)(b) if he had a key to his apartment, and if he wanted to the officers to knock to see if his brother was home. § 87(2)(b) said, "No, my brother should be home, because the door's unlocked. We can just walk in." § 87(2)(b) opened the apartment door and walked inside, followed by PO Figueiredo, PO Jansky, and Sgt. Cain. PO Figueiredo and his partners followed § 87(2)(b) down a short hallway at the end of which was a bedroom. The bedroom door was open and a male, was sitting on the bed. Further investigation identified this male as § 87(2)(b). There did not appear to be anyone else inside the apartment. § 87(2)(b) got up from his bed and walked into the living room where PO Figueiredo stood with his partners and § 87(2)(b) § 87(2)(b) began to yell at § 87(2)(b) "What are you thinking? Why the hell would you bring the police up here, are you nuts?"

PO Figueiredo asked § 87(2)(b) if § 87(2)(b) was his brother, and § 87(2)(b) said yes. PO Figueiredo told § 87(2)(b) that § 87(2)(b) was found in possession of ammunition and that PO Figueiredo and his partners had come to the apartment to speak with one of § 87(2)(b)'s family members. Upon hearing this, § 87(2)(b) became upset. He proceeded to punch Sgt. Cain in the chest, and then ran around Sgt. Cain to enter the bedroom from which he had come. PO Figueiredo and Sgt. Cain followed § 87(2)(b) to the doorway of the bedroom. § 87(2)(b) lunged toward a black 9mm semi-automatic firearm that was lying on a bed. PO Figueiredo and Sgt. Cain grabbed a hold of § 87(2)(b) from behind, and prevented him from reaching the firearm. Sgt. Cain, assisted by PO Figueiredo, attempted to pull § 87(2)(b) outside of the bedroom and away from the firearm. § 87(2)(b) began to throw his elbows out and tried to punch PO Figueiredo and Sgt. Cain. PO Figueiredo and Sgt. Cain attempted to bring § 87(2)(b) to the ground to handcuff him and § 87(2)(b) continued to resist. PO Figueiredo used his radio to request additional units.

PO Figueiredo's attention was focused on attempting to restrain and handcuff § 87(2)(b) and did not recall where PO Jansky or § 87(2)(b) were at this time. After two to three minutes, several units responded to the scene, and other officers assisted in handcuffing § 87(2)(b). PO Figueiredo could not estimate how many additional units responded and did not recall which officers assisted. Once § 87(2)(b) was in handcuffs, other officers escorted him and § 87(2)(b) out of the apartment. PO Figueiredo did not see § 87(2)(b) or § 87(2)(b) once they exited the apartment. PO Figueiredo did not handcuff § 87(2)(b) and could not recall if he saw § 87(2)(b) being handcuffed. PO Figueiredo did not assist in transporting either § 87(2)(b) or § 87(2)(b) to the precinct and did not know which officers did. After § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) were taken out of the apartment, PO Figueiredo, PO Jansky, and Sgt. Cain went to secure the firearm found in § 87(2)(b)'s bedroom. After the firearm was secured and collected, PO Figueiredo, PO Jansky and Sgt. Cain left the scene.

PO Figueiredo did not use any physical force against § 87(2)(b) and he did not see any other officers use any force against him. PO Figueiredo did not see or speak with anyone in the hallway outside of § 87(2)(b) and § 87(2)(b)'s apartment. PO Figueiredo did not observe any injuries on § 87(2)(b) or § 87(2)(b).

Sgt. Patrick Cain

Sgt. Patrick Cain is a § 87(2)(b)-old white male. He is 6'0" tall, weighs 190 lbs, and has brown hair and green eyes. Sgt. Cain is assigned to the 101st Precinct and has been a member of service for eight years. Sgt. Cain called the Internal Affairs command center on June 13, 2008 (encl. 11C) and was interviewed at the CCRB on May 13, 2009 (encl. 11D-F). On the day of the incident, Sgt. Cain was the assigned Anti-Crime supervisor and worked from 5:17 PM to 2:17 AM with PO Andre Figueiredo and PO Jason Jansky. Sgt. Cain was dressed in plainclothes and was the assigned operator of an unmarked vehicle. Sgt. Cain did not remember what he was wearing or the vehicle make, model or number.

Sgt. Cain's memobook (encl. 11A-B) reflected that there were two individuals under arrest at § 87(2)(b). There was no time recorded for this entry.

CCRB Statement

On June 13, 2008, Sgt. Cain, PO Figueiredo and PO Jansky arrived at § 87(2)(b) a NYCHA building, with the intention of performing a vertical. Sgt. Cain parked their vehicle and entered the building approximately 15 feet behind PO Figueiredo and PO Jansky. As Sgt. Cain walked in the building, PO Figueiredo and PO Jansky were asking a young male to exit the elevator in the lobby. Further investigation identified this young male as § 87(2)(b). Sgt. Cain learned from PO Figueiredo and PO Jansky that, moments prior, they had seen § 87(2)(b) throw something on the elevator floor. Sgt. Cain did not see § 87(2)(b) do this.

PO Figueiredo recovered a 3.5 inch by 6 inch box of 9 mm ammunition from the elevator floor. No loose ammunition was recovered from the elevator floor. Sgt. Cain did not recall if § 87(2)(b) admitted ownership or the ammunition or not. Sgt. Cain began to speak with § 87(2)(b) and asked him for his pedigree information. § 87(2)(b) told Sgt. Cain that he lived in the building, in § 87(2)(b), and explained that he did not have ID with him. Sgt. Cain recalled that § 87(2)(b) was a juvenile but he did not remember § 87(2)(b)'s exact age. Sgt. Cain explained to § 87(2)(b) that the officers needed to get identification from him to confirm his address, date of birth and age, and so § 87(2)(b) could be processed for § 87(2)(b). Sgt. Cain also told § 87(2)(b) that the officers needed to speak with one of his family members. Sgt. Cain asked § 87(2)(b) if anyone was home. § 87(2)(b) said yes. § 87(2)(b) did not articulate how many family members were at home or their relation to him. Sgt. Cain's reasons for going to § 87(2)(b)'s apartment were twofold: to receive valid identification from § 87(2)(b) and to notify one of § 87(2)(b)'s family members, as it is procedure to inform a parent or guardian when making a juvenile arrest. Sgt. Cain did not inform § 87(2)(b) that he was being arrested, and § 87(2)(b) was not handcuffed at this time.

As § 87(2)(b) was found with ammunition, the officers suspected that § 87(2)(b) might be in possession of a weapon. § 87(2)(b) was frisked for weapons outside the elevator. Sgt. Cain did not recall who performed the frisk or where on § 87(2)(b)'s body he was frisked. Sgt. Cain believed that a search incident to § 87(2)(b)'s arrest was done before he was taken to the precinct for arrest processing, but did not think one was done before going to § 87(2)(b)'s apartment. Sgt. Cain did not perform that search.

Sgt. Cain, PO Figueiredo, PO Jansky and § 87(2)(b) took the elevator to the 6th floor and walked to the front door of § 87(2)(b)'s apartment. § 87(2)(b) § 87(2)(b) told the officers that the front door was unlocked, and proceeded to walk inside. Sgt. Cain did not enter the apartment for any evidentiary reasons.

§ 87(2)(b) was the first person to enter the apartment. Sgt. Cain, PO Figueiredo and PO Jansky followed § 87(2)(b) into the apartment. Inside § 87(2)(b), there is a large common area and a short hallway. At the end of the hallway on the right side is a bedroom. A man exited the bedroom and walked into the common area. Further investigation identified this man as § 87(2)(b). § 87(2)(b) identified himself as § 87(2)(b)'s older brother. § 87(2)(b) walked quickly towards Sgt. Cain and asked him what was going on. Sgt. Cain told § 87(2)(b) that the officers needed to obtain ID for § 87(2)(b) and explained that § 87(2)(b) had been found with 9mm ammunition. Sgt. Cain asked § 87(2)(b) if there were any guns in the house.

§ 87(2)(b) began to curse loudly and told Sgt. Cain, "You have no right to be here." At this point Sgt. Cain was in the common area and his back was toward the bedroom at the end of the hallway. § 87(2)(b) pushed Sgt. Cain on the chest with both of his hands. Sgt. Cain pushed § 87(2)(b) back in the same manner. § 87(2)(b) then punched Sgt. Cain in the chest once with a closed fist, and ran around Sgt. Cain, heading toward the bedroom. § 87(2)(b) made his way to the bedroom with Sgt. Cain in close pursuit. § 87(2)(b) began diving and reaching towards the bed with his right hand. Sgt. Cain was behind § 87(2)(b) and grabbed him around the waist, and turned him around to pull him away from what he was reaching for. Once Sgt. Cain pulled § 87(2)(b) away from the bed, he saw a 9mm black firearm on the bed. § 87(2)(b) did not gain possession of the firearm. § 87(2)(b) began to punch Sgt. Cain, and PO Figueiredo, who had followed behind Sgt. Cain to assist him. Sgt. Cain punched § 87(2)(b) four to five times with his left hand. Sgt. Cain aimed for § 87(2)(b)'s chest and head, but was not positive where the blows landed. The struggle was so chaotic that Sgt. Cain could not clearly articulate how PO Figueiredo and PO Jansky assisted him in restraining § 87(2)(b). Sgt. Cain directed PO Jansky to use his radio to request additional units and PO Jansky did so. The struggle lasted approximately two minutes.

Sgt. Cain was not sure how long it took for additional units to arrive. It seemed like the whole platoon arrived. Sgt. Cain and his partners were successful in handcuffing § 87(2)(b) before additional units arrived. Once additional units arrived, § 87(2)(b) was handcuffed. Sgt. Cain did not handcuff § 87(2)(b) and did not know who had. § 87(2)(b) and § 87(2)(b) were escorted out of the building by officers who had responded to the 10-85. PO Figueiredo recovered the 9mm firearm from the bedroom in Sgt. Cain's presence. The firearm was loaded.

No physical force was ever used by Sgt. Cain or his partners against § 87(2)(b). § 87(2)(b) was entirely compliant at all times. Once the struggle with § 87(2)(b) began, PO Jansky directed § 87(2)(b) to sit on a couch in the common area and § 87(2)(b) did so. § 87(2)(b) did not attempt to assist § 87(2)(b) at all in the struggle. Sgt. Cain did not observe any injuries on § 87(2)(b) or § 87(2)(b).

PO Jason Jansky

PO Jason Jansky is a § 87(2)(b)-old white male. He is 5'9" tall, weighs 190 lbs, and has brown hair and green eyes. PO Jansky is assigned to the 101st Precinct, and has been a member of service for four years. PO Jansky was interviewed at the CCRB on May 13, 2009 (encl. 12C-E). On the day of the incident, PO Jansky was assigned to Anti-Crime and worked from 5:30 PM to 2:05 AM with PO Andre Figueiredo and Sgt. Patrick Cain. PO Jansky was dressed in plainclothes and assigned to an unmarked vehicle; he did not remember what he was wearing or his assigned vehicle's make, model, or number.

PO Jansky's memobook (12A-B) did not contain any entries pertaining to this incident. In the margin of PO Jansky's entry for June 12, 2008, PO Jansky noted: "crime: gun."

CCRB Statement

During his CCRB statement, PO Jansky was asked to explain what the above notation meant. PO Jansky stated that the note reminded him of what he did that day. "Crime" referred to anti-crime, which was not his usual assignment, and "gun" meant an arrest for § 87(2)(b).

On June 12, 2008, at approximately 11:30 PM, PO Jansky and his partners, PO Figueiredo and Sgt. Cain, entered a NYCHA building at § 87(2)(b) with the intention of doing a vertical. Upon

entering the building, PO Jansky saw an individual waiting for the elevator on the first floor. Further investigation identified this individual as § 87(2)(b). PO Jansky was approximately 10 feet away from § 87(2)(b). As the elevator door opened, PO Jansky and his partners started walking toward § 87(2)(b). PO Jansky was not sure which officer first called out to § 87(2)(b). Either himself or PO Figueiredo or Sgt. Cain said, “Hey, what’s up?” § 87(2)(b) looked back at the officers and threw something that was in his hand onto the floor of the elevator. PO Jansky could not see what § 87(2)(b) dropped. Whatever it was made a loud noise, as if it were heavy, when it hit the elevator floor.

PO Jansky, PO Figueiredo and Sgt. Cain approached § 87(2)(b) and asked him what his name was, and what was going on. PO Jansky stated that all three officers spoke with § 87(2)(b). Once the officers began speaking with § 87(2)(b), PO Jansky saw the item that § 87(2)(b) had dropped on the elevator floor. The item was a three inch by six inch white box of Winchester bullets. PO Jansky and his partners asked § 87(2)(b) what he was doing with the box of ammunition. § 87(2)(b) said that the box of ammunition was not his; it was his brother’s. At this time, PO Jansky and his partners intended to arrest § 87(2)(b) for possession of ammunition, which is an administrative code violation. As § 87(2)(b)’s offense was just a violation, and he was compliant in answering the officer’s questions, PO Jansky and his partners determined it was not necessary to handcuff § 87(2)(b) at that time. The officers asked § 87(2)(b) for his name, date of birth and address which § 87(2)(b) provided. § 87(2)(b) told the officers that he lived on the 6th Floor of the building. PO Jansky did not see any identification of § 87(2)(b) and believed that § 87(2)(b) did not have any on him.

PO Jansky recalled that § 87(2)(b) was a juvenile, and thought that § 87(2)(b) might have said he was § 87(2)(b) old. PO Jansky stated that when a juvenile will be arrested for a crime, it is procedure to notify a family member. PO Jansky and his partners asked § 87(2)(b) if any of his family members were at home. § 87(2)(b) told the officers that his older brother was, and told the officers he could bring them upstairs to speak with his brother. PO Jansky stated that his and his partner’s intentions were twofold: to notify a family member of a juvenile arrest per procedure; and to determine whether § 87(2)(b) was a resident of the building, and not trespassing, a common violation in NYCHA buildings.

PO Jansky stated that as a matter of policy, a frisk for weapons and a search incident to § 87(2)(b)’s arrest would have been performed, however, PO Jansky did not recall when a frisk and or search occurred or who performed it. PO Jansky, PO Figueiredo and Sgt. Cain got in the elevator with § 87(2)(b) and followed him to his apartment on the 6th floor. Once they arrived outside § 87(2)(b), PO Jansky and his partners asked § 87(2)(b) if he had a key to the apartment, or if they should knock to be let in. § 87(2)(b) said, “No, it’s open. We can go in,” and proceeded to open the apartment door and walk inside. PO Jansky did not recall if Sgt. Cain or PO Figueiredo entered the apartment immediately following § 87(2)(b). He recalled that he was the last to enter.

Once inside the apartment, PO Jansky and his partners stood in the living room. PO Jansky saw a black male, who § 87(2)(b) identified as his older brother, § 87(2)(b) enter the living room from a bedroom off the right side of the hallway. § 87(2)(b) began to yell at § 87(2)(b) and said, “What are you doing? Why are you bringing the cops in here?” Sgt. Cain was standing closest to § 87(2)(b) and § 87(2)(b) punched Sgt. Cain once in the chest with a closed fist. § 87(2)(b) ran down the hallway to the bedroom he had just exited. PO Figueiredo and Sgt. Cain followed § 87(2)(b) down the hallway and into the bedroom. PO Jansky stayed with § 87(2)(b) and decided to handcuff him to make sure that § 87(2)(b) did not try to flee or engage in the struggle with § 87(2)(b) and Sgt. Cain and PO Figueiredo. PO Jansky instructed § 87(2)(b) to sit on the ground, which he did. § 87(2)(b) was entirely compliant, and did not make any indication that he intended to fight or try to flee from the apartment.

PO Jansky’s attention was focused on § 87(2)(b) and therefore he did not see Sgt. Cain or PO Figueiredo attempt to handcuff § 87(2)(b). PO Jansky could determine, however, that PO Figueiredo and Sgt. Cain were having difficulty in trying to restrain § 87(2)(b) so he used his radio to call a 10-85 for additional units. PO Jansky could not estimate how long a struggle ensued between Sgt. Cain, PO Figueiredo and § 87(2)(b) or how much time elapsed before additional units arrived. Once additional units arrived, they stood in the hallway. PO Figueiredo and Sgt. Cain had handcuffed one of § 87(2)(b)’s wrists, and brought him to the door of the apartment. § 87(2)(b) was handed to officers from responding units who were in the

hallway. PO Jansky did not know how many units responded and did not see which officers escorted § 87(2)(b) into the hallway. PO Jansky could not recall if he escorted § 87(2)(b) outside of the apartment or if other officers had done so. PO Jansky did not see § 87(2)(b) or § 87(2)(b) once they were taken outside of the apartment and into the hallway. PO Jansky and his partners did not transport § 87(2)(b) or § 87(2)(b) to the precinct. PO Jansky did not know which officers had done so.

At some time before leaving the apartment, PO Jansky learned from PO Figueiredo and Sgt. Cain that a firearm had been recovered from the inside apartment. PO Jansky did not recover this firearm himself. PO Jansky and his partners then drove to the 101st Precinct to process § 87(2)(b) s and § 87(2)(b) s arrests.

Police Department Documents

101st Precinct Command Log

The 101st Precinct command log for June 13, 2008 (encl. 13A) noted that at 12:16 AM on June 13, 2008, § 87(2)(b) was arrested at § 87(2)(b) for § 87(2)(b). The command log noted that § 87(2)(b) was § 87(2)(b) old on the date of his arrest, and that a juvenile report was prepared. § 87(2)(b) was released to his mother at 3:00 AM.

101st Precinct Roll Call

The 101st Precinct roll call for June 13, 2008 (encl. 13B-C) noted that Sgt. Cain was assigned to work from 5:20 PM to 2:05 AM as the operations commanding officer. The roll call also noted that PO Figueiredo and PO Jansky were assigned to Anti-Crime.

101st Precinct Prisoner Holding Pen Roster

The 101st Precinct prisoner holding pen roster for June 13, 2008 (encl. 13D) noted that § 87(2)(b) was present in the juvenile room 12:15 AM to 3:00 AM.

SPRINT Job X16659

A print-out for SPRINT Job X16659 (encl. 13E-F) noted the following: at 12:16 AM on June 13, 2008, the 101st Precinct Sergeant on patrol requested that additional units respond to § 87(2)(b). At 12:24 AM the 101st Precinct Anti-Crime car reported that two individuals were under arrest, and the arrests were verified at 12:32 AM. At 12:32 AM, all units resumed patrol. No further information pertaining to the arrests was reflected in this communication record.

Juvenile Report

The investigation was ultimately unable to obtain a copy of the juvenile report prepared for § 87(2)(b) pertaining to this incident. A request from Youth Services Section on February 18, 2009 (encl. 18L-N) was returned with no matches for § 87(2)(b) on the incident date.

Video Footage

A request for Viper footage for § 87(2)(b) on April 7, 2009, was returned with negative results (encl. 18A13-18A16). The request noted that there are no viper systems, CCTV systems, or small scale camera systems within this location.

Civilian Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer CCRB History

PO Andre Figueiredo

PO Figueiredo has been a member of service for four years. In case #200803055, a threat of force allegation was substantiated against PO Figueiredo and he received instructions (encl. 2A).

Sgt. Patrick Cain

Sgt. Patrick Cain has been a member of service for six years and has had no CCRB allegations substantiated against him (encl. 3A).

Notice of Claim

As of April 7, 2009, the New York City Comptroller's Office was not in possession of a notice of claim pertaining to this case (encl. 15A).

Conclusions and Recommendations

Officer Identification

Statements and documentary evidence identified Sgt. Patrick Cain, PO Andre Figueiredo, and PO Jason Jansky as involved in the incident. § 87(2)(g)

According to § 87(2)(b) an officer identified as PO Figueiredo frisked and searched him. PO Figueiredo stated that both he and PO Jansky frisked § 87(2)(b) PO Figueiredo stated that a search incident to § 87(2)(b)'s arrest was done but he did not recall who performed it or when it was done. Sgt. Cain and PO Jansky stated that per arrest procedure, a frisk and search of § 87(2)(b) were done, but both officers did not remember which officer performed the frisk and search. § 87(2)(g) § 87(2)(b) stated that officers identified as Sgt. Cain, PO Figueiredo and PO Jansky entered his apartment; § 87(2)(g)

§ 87(2)(b) stated that an officer identified as Sgt. Cain slapped a telephone out of § 87(2)(b)'s hand; § 87(2)(g)

§ 87(2)(b) alleged that he was punched in the ribs multiple times by an officer or officers; however, he could not see this officer and therefore could not describe him. § 87(2)(b) also stated that an officer whom he could not describe pushed his head against the elevator wall and held it there. The investigator made multiple attempts to contact § 87(2)(b) to obtain more details regarding the officers who allegedly used force against him in this matter. The investigation was ultimately unsuccessful in her attempts to contact § 87(2)(b) § 87(2)(g)

§ 87(2)(b) did not witness any physical force used by Sgt. Cain or PO Figueiredo against § 87(2)(b) § 87(2)(b) could also not describe the officers who allegedly used force against § 87(2)(b) once § 87(2)(b) was taken outside of § 87(2)(b). § 87(2)(g)

Undisputed Facts

It is undisputed that a box of ammunition was found on the floor of an elevator inside the lobby of § 87(2)(b). It is undisputed that § 87(2)(b) was frisked and searched. It is undisputed that PO Figueiredo, PO Jansky, and Sgt. Cain explained to § 87(2)(b) that because he was a juvenile, they would have to speak to his parent or guardian. As the investigation was unable to identify the officer(s) who allegedly used physical force against § 87(2)(b), it is undisputed that “Officers” used physical force against § 87(2)(b).

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

According to § 87(2)(b) at some point during his interaction with PO Figueiredo, either PO Jansky or Sgt. Cain entered the elevator and noticed the box of ammunition on the floor. This officer said, “He had bullets on him.” PO Figueiredo told § 87(2)(b) that he would have to be taken upstairs.

According to PO Figueiredo upon entering the lobby of § 87(2)(b) he saw § 87(2)(b) putting a small box inside one of his pants pockets. When § 87(2)(b) saw PO Figueiredo and his partners, he threw the box on the elevator floor. According to PO Jansky, while walking into the lobby, either he or one of his partners said, “What’s up?” to § 87(2)(b) dropped a box on the elevator floor.

§ 87(2)(g)

It is undisputed that the item found on the elevator floor was a box of 9mm ammunition.

According to § 87(2)(b) after PO Jansky or Sgt. Cain found the box of ammunition on the elevator floor, PO Figueiredo handcuffed § 87(2)(b). According to PO Figueiredo, PO Jansky and Sgt. Cain, § 87(2)(b) was not handcuffed prior to going to his apartment. PO Figueiredo stated that § 87(2)(b) was not handcuffed because he was very compliant, and did not pose a threat to himself and his partners. PO Jansky stated that he handcuffed § 87(2)(b) once the struggle between Sgt. Cain, PO Figueiredo and § 87(2)(b) began. PO Jansky stated that handcuffed § 87(2)(b) at this time in case § 87(2)(b) attempted to assist § 87(2)(b) in his struggle against Sgt. Cain and PO Figueiredo. Sgt. Cain stated that § 87(2)(b) was not handcuffed until additional units arrived, and noted that § 87(2)(b) was compliant throughout the incident.

§ 87(2)(g)

Allegation A. PO Andre Figueiredo stopped § 87(2)(b)

Within the meaning of the 4th Amendment, a person is seized when his movement is limited in such a way that he or she would not be free to leave. According to Patrol Guide Procedure 208-01, a member of service has the authority to detain an individual when he has reasonable suspicion that the person has, is, or is about to commit a violation in his presence (encl. 1A).

§ 87(2)(g)

Allegation B. PO Andre Figueiredo frisked § 87(2)(b)

Allegation C. PO Andre Figueiredo searched § 87(2)(b)

According to Patrol Guide procedure 208-05, members of service are authorized to perform a frisk/field search of an arrestee immediately after apprehension to find weapons, evidence or contraband (encl. 1B).

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

Allegation D. “Officers” entered § 87(2)(b) Apartment 6E.

According to PO Figueiredo, PO Jansky, and Sgt. Cain, when making a juvenile arrest, it is procedure to notify the juvenile’s parent or guardian before taking the juvenile to the precinct for processing. According to Patrol Guide Procedure 208-03 (encl. 1C), an officer must notify a parent or guardian after taking a juvenile into custody. § 87(2)(g)

[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

Allegation E. Sgt. Patrick Cain acted rudely toward § 87(2)(b)
Allegation F. Officers used physical force against § 87(2)(b)

§ 87(2)(g)
[Redacted]
[Redacted]

Allegation G. Officers used physical force against § 87(2)(b)

§ 87(2)(g)
[Redacted]
[Redacted]

Investigator:	Date:
Margot Hesel	May 29, 2009
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: